

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

**In Re:**

§ Case No. 21-60052 (CML)

§

§

**SCOTT VINCENT VAN DYKE**

§ Chapter 7

§

**Debtor(s)**

§ RE: Docket Nos. 354, 355, & 372

**MARY KATHERINE ALONSO AND RUDOLPH M. CULP, AS DEPENDENT  
ADMINISTRATOR OF THE ESTATE OF MARY THERESA VAN DYKE,  
DECEASED'S MOTION REQUESTING CONFIRMATION OF ORDER  
CONDITIONALLY MODIFYING THE AUTOMATIC STAY TO PERMIT CERTAIN  
PROBATE PROCEEDINGS TO CONTINUE**

---

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

**Represented parties should act through their attorney.**

**To the Honorable Christopher M. Lopez, United States Bankruptcy Judge:**

Mary Katherine Alonso (“Ms. Alonso”) and Rudolph M. Culp, the Dependent Administrator of the Estate of Mary Theresa Connelly Van Dyke, Deceased (the “Administrator” and, together with Ms. Alonso, the “Movants”), jointly file this *Motion Requesting Confirmation Of Order Conditionally Modifying The Automatic Stay To Permit Certain Probate Proceedings To Continue* (the “Motion”) and respectfully represent:

**I.       SUMMARY OF RELIEF REQUESTED**

1.       Movants return to this Court for the third time to seek enforcement of this Court’s

past orders allowing the Probate Court to finally set for trial (and conduct a trial on) the matters made clear by this Court's prior orders. This Court's prior orders continue to be substantially ignored by Scott Van Dyke ("Van Dyke" or "Debtor") as Van Dyke continues to make certain statements to the Probate Court suggesting that a ruling is pending by this Court that compels the Probate Court to cancel yet another trial date.

2. As the Court may recall, more than 180 days after this Court converted Van Dyke's failed Chapter 11 to a Chapter 7 case, Mary Katherine Alonso (Alonso), on behalf of the Estate of Mary Theresa Connelly Van Dyke, deceased (the "Probate Estate" or the Mother's Estate") was involved in a contest to appoint the administrator and Van Dyke claimed, among other matters, that his bankruptcy case prevented the Estate from taking certain actions. Alonso filed her first Motion seeking permission to continue the probate of their Mother's Estate, appoint an administrator, and conclude all matters required. On notice to Van Dyke and his lawyer, this Court entered its first order (Order #1, a copy attached as Exhibit A) that allowed the Probate Court to administer the Mother's Estate, without exception, provided, however, Alonso or the Mother's Estate would report to the Chapter 7 Trustee and this Court the outcome of all Probate Estate property and distributions and the Chapter 7 trustee reserved her rights to claim that any assets of the Probate Estate were property of the Chapter 7 Estate.

3. More than a year later Van Dyke, in a renewed effort to avoid pending discovery motions to compel in ongoing litigation in the Probate Court, notified the Probate Court of his Discharge Order and demanded that all litigation in the Probate Court come to a hault. Thereafter, the Administrator returned to this Court with a Motion to Clarify that the Probate Court was not impacted by the Discharge Order and the Probate Court could proceed to determine the heirs' entitlements, offsets, distributions in kind or in cash, if any. This Court entered its clarifying Order

(Order #2, further defined below and attached as **Exhibit B**) instructing the parties that Order #1 was not set aside or limited by the Discharge Order and all Probate Estate claims against Debtor could proceed in Probate Court. *See* Order #2.

4. Remarkably, Van Dyke, unsatisfied with this Court's rulings, filed a new action in the District Court, Southern District of Texas (Houston Division) seeking injunctive relief against the Administrator and Alonso, asserting the same argument made before this Court regarding Order #2 and asking the District Court for essentially the same ultimate relief – to enjoin the administration and litigation in the Probate Court. As Van Dyke should have expected, the District Court referred the Lawsuit to this Court for a status conference, leaving this Court to reconsider, if it so elects, Order #2, or as requested by the Administrator, to enforce Order #2 and deny all relief in the pending referred District Court case. More problematic, most recently, after seeking the procedurally improper injunction in this proceeding, Debtor demanded yet another continuance in Probate Court of the January 13, 2025 trial setting. To convince the Probate Court of the merits of the Debtor's demanded continuance, Van Dyke told the Probate Court that the outstanding, but anticipated, rulings from this Court *have been "promised"* and that the issue of whether Debtor;s Discharge Order prevents a trial in the Probate Court has *not been ruled on* despite prior orders permitting Movants to move forward in the Probate Court, both pre-and-post Discharge Order. Van Dyke claimed he was told that the delays were because this Court is busy with the Alex Jones proceeding. [See, infra Note 4, and ¶¶ 22-25 including the Probate Court hearing transcript]. Following these representations by Van Dyke, the Probate Court cancelled the trial setting and suggested the parties should return to the Bankruptcy Court for this future ruling.

5. Movants file this Motion out of frustration, not simply from Van Dyke's conduct in ignoring this Court's Orders, but in making continued representations about this Bankruptcy

Court's controlling jurisdiction over whether the trial in the Probate Court can proceed, knowing that State District or Probate Judges are extremely sensitive in deferring to Bankruptcy Courts and process, such that any misrepresentation is taken seriously, evidenced by the fact that two (2) Orders of this Court were presented to the Probate Court that then set a trial date, only to be derailed by Van Dyke's suggestion of promises of this Court ruling and reconsideration of its prior two (2) Orders.

6. Movants are aware of no such promises and believe that the Court's prior orders have already clarified this Court's rulings that no Section 524 injunction prevents a trial in Probate Court. Yet, the Debtor has now led the Probate Court to believe *that such a ruling is required before the trial in Probate Court can proceed.* And Debtor may obtain future delays that benefit both him and other defendants based on such claims. Therefore, it is necessary to file this Motion to seek this Court's third Order to prevent additional delays in the Probate Court.

## **II. BACKGROUND FACTS**

7. As this Court is aware, on May 25, 2021, Debtor filed a voluntary chapter 11 petition.

8. On December 6, 2021, Debtor's mother passed away, and her Probate Estate was opened in Harris County, Texas.

9. On January 31, 2022, this Court entered its Order Converting Case to Chapter 7. Docket No. 129.

10. On May 6, 2022, Movant Ms. Alonso, together with the Chapter 7 Trustee, filed their *Joint Motion for an Order Conditionally Modifying the Automatic Stay to Permit Certain Probate Proceedings to Continue.* Docket No. 168 (the "Stay Modification Motion"). The Court entered its *Order Conditionally Modifying The Automatic Stay To Permit Certain Probate*

*Proceedings To Continue* on June 7, 2022 (“Stay Modification Order” or “Order #1”),<sup>1</sup> which Ms. Alonso agreed to in an attempt to preserve claims the Probate Estate may have against Debtor’s interest in or liability to the Probate Estate. The Debtor did not respond or otherwise object to the Stay Modification Motion or the Stay Modification Order.

11. On December 7, 2022, the Court entered an *Order of Discharge*, Docket No. 284 (the “Discharge Order”).

12. On July 27, 2023, Rudolph M. Culp was appointed as the Dependent Administrator of the Estate of Mary Theresa Connelly Van Dyke, Deceased. Thereafter, Administrator became the party with legal authority to prosecute claims on behalf of the Probate Estate as well as object to the dischargeability of debts due to the Probate Estate.

13. Following Administrator’s appointment, Debtor has asserted his Discharge Order as a complete and total bar in the Probate Estate and litigation related to the Probate Estate to avoid liability in or to the Probate Estate.

14. On June 20, 2024, Debtor filed a *Motion for Contempt and Show Cause*, contending that Movants violated a post-discharge injunction. See Docket No. 354.

15. On June 21, 2024, Movants filed a *Motion to Clarify*, seeking clarification that the Movants’ interpretation of this Court’s Lift Stay Order permits Movants to prosecute claims against Debtor in the Probate Court. See Docket No. 355.

16. On July 16, 2024, this Court issued its *Order Clarifying the Order Conditionally Modifying the Automatic Stay to Permit Certain Probate Proceedings to Continue* (“Clarifying Order” or “Order #2”), expressly allowing all Probate Estate claims against Debtor to proceed in

---

<sup>1</sup> See Court’s Stay Modification Order, attached as Exhibit A.

Probate Court. Docket No. 358.<sup>2</sup> Movants contend that this Clarifying Order resolved all doubt regarding whether Movants can proceed with the claims asserted against Debtor in Probate Court.

17. Despite this Court's Order #1 lifting of the stay to permit probate proceedings to continue, and Order #2 clarifying that Movants can now proceed in Probate Court (which is well after this Court's Discharge Order), Debtor then filed in Federal District Court a wholly separate lawsuit against Movants, Ms. Alonso's counsel, Sarah Patel Pacheco, and JACKSON WALKER LLP for purported violations of a post-discharge injunction seeking the same relief that he sought before this Court (the "Lawsuit"). The Lawsuit came after this Court confirmed in Order #2 (which was entered well after the Discharge Order) that Movants could proceed in Probate Court with all of their Probate Estate claims against Debtor. The Lawsuit has since been referred to this Court.<sup>3</sup>

18. After this Court issued its Clarifying Order (Order #2), Debtor filed: (1) *Debtor's Motion to Alter or Amend Order Clarifying Order Conditionally Modifying the Automatic Stay to Permit Certain Probate Proceedings to Continue ("Motion for Reconsideration")*, and (2) *Emergency Motion for Preliminary Injunction*. See Docket Nos. 361, 372. Movants believe that these Motions are moot due to this Court's express order permitting all Probate Estate claims against Debtor to proceed in the Probate Court. Thus, this Court has before it (1) the newly referred Lawsuit seeking to avoid the relief that was the subject of Order #1 and Order #2; (2) *Debtor's Motion for Reconsideration* seeking to avoid the relief that was the subject of Order #1 and Order #2; and (3) *Debtor's Emergency Motion for Preliminary Injunction* seeking to avoid the relief that was the subject of Order #1 and Order #2.

---

<sup>2</sup> See Court's Clarifying Order, attached as Exhibit B, which includes the following provision: "The [Stay Modification Order] allows all Probate Estate claims against the Debtor to proceed in probate court."

<sup>3</sup> See Lawsuit Docket No. 9.

**III. VAN DYKES' REPRESENTATIONS TO THE PROBATE COURT  
LEADING TO THE MOST RECENT CANCELLATION OF THE TRIAL DATE**

19. Following Debtor's attempt to obtain a preliminary injunction in this Court,<sup>4</sup> Debtor filed his Emergency Motion for Continuance of the January 13, 2025, trial setting in the Probate Court.

20. On December 19, 2024, the Probate Court held a hearing to determine whether a continuance was warranted. At the hearing, Mr. Kenneth Krohn, counsel for Debtor, represented to the Probate Court that this Court has “***promised*** an order clarifying whether or not [Debtor] has been discharged.”<sup>5</sup> And, Mr. Krohn further suggested that the delay in this “promised” ruling was because “Judge Lopez is dealing with the Alex Jones’ Infowars bankruptcy proceeding” and “does not feel that [this case] is as pressing.”<sup>6</sup>

4	MR. KROHN: Well, that kind of gets into a
5	secondary issue, Your Honor, which is Judge Lopez at the
6	bankruptcy court has been promising an order clarifying
7	whether or not Scott has been discharged or the claims
8	survive since October 8th.
9	What I understand -- I didn't speak with
10	Judge Lopez's staff, but having spent -- Matt Probus is
11	the bankruptcy lawyer. The issue is Judge Lopez is
12	dealing with the Alex Jones' Infowars bankruptcy
13	proceeding. I would say brouhaha, but there seems to be
14	the more appropriate legal term.

---

<sup>4</sup> Debtor’s request for preliminary injunction seeking a ruling on or before January 6, 2025, is now moot.

<sup>5</sup> See Transcript from December 19, 2024, Hearing, at 40:4-8, attached as Exhibit C and incorporated herein by this reference.

<sup>6</sup> Exhibit C, at 40:4-14.

16                           MR. KROHN: And so kind of does not -- does  
 17 not feel our case is as pressing as perhaps that one is.  
 18 So if we do have a trial setting in May -- we've been  
 19 waiting since October. We could have a finding today or  
 20 we could have a finding in April. And so I just don't  
 21 know. And so I would just -- if we're going to have a  
 22 trial setting, that's fine. But I just want the Court  
 23 to be aware that we may still be waiting for a ruling  
 24 from the bankruptcy court as to whether Scott is liable  
 25 or not. And that's kind of a fundamental issue in the

21. Movants are unaware that this Court has “promised” anything to anyone. This Court has issued two orders based on submitted briefing. Movants believe that the Stay Order’s language, together with this Court’s Clarifying Order, permit Movants to proceed in the Probate Court to determine what interest, if any, Debtor has remaining in the Probate Estate based on Debtor’s interest in or liability to the Probate Estate. *See Docket No. 358, Clarifying Order (“The Stay Order allows ***all Probate Estate claims against the Debtor*** to proceed in probate court.”)* (emphasis added). Thereafter, any interest the Chapter 7 Trustee asserts in the Probate Estate is subject to further review by this Court. This is precisely what Movants have done in accordance with these Orders.

22. What has become clear is Debtor wants delay. Debtor continues to promote, and has now obtained, a continuance from the Probate Court in part purportedly to “secure rulings from the Bankruptcy Court” that are controlling in the Probate Court. This is based on the foregoing representations to the Probate Court that the parties are still “waiting for a ruling” from this Court, and that there in fact is an “injunction” in place despite this Court permitting Movants

to move forward in the Probate Court on multiple occasions.<sup>7</sup> Debtor's contentions are also based on his presumed speculation the Alex Jones proceeding is "more pressing" than the current proceeding and "promised rulings."

23. Debtor also told the Probate Court that there was an injunction under 11 U.S.C. section 524 that is currently in effect, and that this Court must issue a ruling despite having previously held that Movants were permitted to pursue claims in the Probate Court.<sup>8</sup>

4	THE COURT: At this point, we're not under
5	a stay, correct?
6	MR. KROHN: Well, not under the 365 stay.
7	Our position in bankruptcy court is the 524 injunction
8	prevents Mr. Culp, Mrs. Alonso, even her lawyers from
9	continuing or commencing an action on a claim that has
10	been discharged. So there's not -- there's an
11	injunction, right, there is an injunction. And what
12	Scott had to do in bankruptcy court is he had to file a
13	motion to show cause for contempt under that injunction.
14	That has been what has been pending since September or
15	October. And I can tell you the exact date. It's in
16	the motion.

24. Following these representations and other arguments the Probate Court granted a continuance of the trial to June 2, 2025.<sup>9</sup> And the Probate Court suggested it would move the trial again if this Court does not issue the ruling that Debtor's counsel has suggested is forthcoming.<sup>10</sup>

---

<sup>7</sup> Exhibit C, at 40:16-25.

<sup>8</sup> Exhibit C, at 42:4-16.

<sup>9</sup> Exhibit C, at 45:12-16.

<sup>10</sup> Exhibit C, at 42:18-24.

25. Debtor's delay tactics are further concerning given that Mr. Krohn also informed the Probate Court that, because the Probate Estate sought an accounting in Probate Court, Debtor would be required to retain criminal defense counsel to defend against allegations of breach of fiduciary duty. If the Debtor had previously provided credible information to this Court and the Probate Court, it is unclear why he believes he needs to retain criminal defense counsel.<sup>11</sup>

#### **IV. RELIEF SOUGHT**

26. Debtor has used the pending Motions in this Court (Docket Nos. 361, 372) as a delay tactic in the Probate Court in an attempt to first avoid discovery and now trial in the Probate Court. Debtor has utilized the parallel litigation to again avoid a January trial setting in Probate Court. Accordingly, the Movants respectfully request that:

- a. These three (3) pending matters (Docket Nos. 354, 361, and 372) be considered together and the Court enter an order denying all such relief and find that Debtor's request for a preliminary injunction is moot;
- b. This Court enter yet a third order affirming the Courts' prior two (2) orders (Docket Nos. 176 and 358) and confirm that there is no injunction currently in effect

---

<sup>11</sup> See **Exhibit C**, at 26:12-20, which provides:

12	Mr. Culp went to great extent to come back
13	and talk about misappropriation of money by Mr. Van Dyke
14	that's unexplained. I do not believe that the statute
15	authorizing a fiduciary account in any way would
16	circumvent my client's constitutional rights either to
17	assert a Fifth Amendment defense to responding and
18	incriminating himself in criminal conduct. And if
19	that's the allegation here, he stole money, my client
20	certainly needs a criminal defense counsel.

preventing Movants from pursuing Probate Estate claims against Debtor in the Probate Court;

- c. This Court, pursuant to this Court's Clarifying Order [Docket No. 358] and the proposed order granting this Motion (the "Proposed Order #3"), confirm that Movants are permitted to proceed to trial in the Probate Court on all Probate Estate claims against Debtor and find and confirm that Movants have not violated any post-discharge injunction;
- d. This Court enter its Order preventing Debtor from seeking any further delays in the Probate Court based on any claim of bankruptcy jurisdiction or the bankruptcy Discharge Order without first obtaining this Court's permission, and further Ordering that any further request of Debtor filed with this Court shall not in any manner impede the Probate Court from probating the Probate Estate, ordering discovery or other pre-trial matters, and conclude the pending litigation, and the filing by Debtor of such a request shall not be grounds for Debtor to request or demand any further continuance in the Probate Court, unless and until this Court actually orders such relief; and
- e. This Court enter Proposed Order #3 without prejudice to the Movants' right to seek sanctions with respect to any violation of the Proposed Order #3 following its entry, and to seek sanctions for all delaying conduct of Debtor from and after the entry of the Courts's Order #2.

**V. CONCLUSION**

27. Debtor has continued to use the bankruptcy proceeding as a sword under the guise of a shield by his erroneous interpretations of this Court's Order #1 and Order #2 to delay trial in the Probate Court.

28. Movants seeks a confirmation ruling from this Court to finally put to rest Debtor's erroneous interpretations of this Court's Order #1 and Order #2 and allow the trial in Probate Court against Debtor and others to go forward, including the requests set out in ¶ 26 above.

29. Movants Mary Katherine Alonso and Rudolph M. Culp, the Dependent Administrator of the Estate of Mary Theresa Connelly Van Dyke, Deceased, respectfully request that this Court grant all relief requested above, and grant such other and further relief to which Movants may show they are justly entitled, both at law and in equity.

Dated: January 27, 2025

*/s/ Bruce J. Ruzinsky*

**JACKSON WALKER LLP**

Bruce J. Ruzinsky (TX Bar No.  
17469425)

Genevieve M. Graham (TX Bar No.  
24085340)

Emily Meraia (TX Bar No. 24129307)  
1401 McKinney Street, Suite 1900  
Houston, TX 77010

Telephone: (713) 752-4200  
Facsimile: (713) 752-4221  
Email: bruzinsky@jw.com  
ggraham@jw.com  
emeraia@jw.com

- and -

SHELBY A. JORDAN

State Bar No. 11016700

S.D. No. 2195

***Jordan & Ortiz, P.C.***

500 North Shoreline Blvd., Suite 900

Corpus Christi, TX 78401  
Telephone: (361) 884-5678  
Facsimile: (361) 888-5555  
Email: sjordan@jhwclaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that on January 27, 2025, I caused a copy of the forgoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Bruce J. Ruzinsky*  
Bruce J. Ruzinsky

**EXHIBIT A**

**ENTERED**

June 07, 2022

Nathan Ochsner, Clerk

**THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

**In Re:****SCOTT VINCENT VAN DYKE****Debtor(s)**

§      Case No. 21-60052-CML  
§  
§      Chapter 7  
§  
§

**ORDER CONDITIONALLY MODIFYING THE AUTOMATIC STAY TO  
PERMIT CERTAIN PROBATE PROCEEDINGS TO CONTINUE**

---

Upon the Joint Motion of Catherine Curtis, Chapter 7 Trustee for the Estate of Scott VanDyke and Mary Katherine Alonso, a party in interest requesting an Order Conditionally Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362 to Permit Certain Probate Proceedings to Continue as set out hereinbelow, and finding that this Court has core jurisdiction over the relief sought and due and proper notice and opportunity to be heard has been afforded according to law, and the Court further finds:

1. On May 25, 2021 (the “Petition Date”), Scott VanDyke (herein the “Debtor”) filed a voluntary Chapter 11 Petition [Dkt #1] that has since been converted to a Chapter 7 case [Dlt #129], (the “Bankruptcy Case”) with Catherine Curtis being appointing and qualifying and is now acting as the Chapter 7 case Trustee (herein “Trustee”).
2. The Court has jurisdiction over this Motion under 28 U.S.C. § 1334, which is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. Beyond 180 days from the Petition Date, and on or about December 6, 2021 the Debtor’s and Alonso’s mother Mary Theresa Connelly VanDyke died and probate of her estate has been opened in Harris County, Texas, Docket No. 501470 (the “Estate”).
4. The Debtor’s sisters, including Mary Katherine Alonso, are heirs to the estate and Alonso has filed her First Amended Application For Probate of Will (the “Application”), a true and accurate copy of which is attached to the Joint Motion whereby Alonso seeks the appointment as the Independent Administrator of the Estate and seeks letters of administration confirming her power and authority.

5. The Debtor has applied for appointment as the Independent Executor under and pursuant to a Durable Power of Attorney and Living Will set out in the Application.

6. In response, as set out in the Application filed by Alonso, are a series of claims made by Alonso that the Debtor has breached his fiduciary duty to his mother, to the Estate, and to the family members and is unqualified to serve in a fiduciary capacity to the Estate.

7. The probate court has jurisdiction over Estate property and the handling of the Estate's property, subject in part to the automatic stay arising upon the Debtors filing of his Bankruptcy Case and the Probate Court has exclusive jurisdiction to administer the Probate Estate but desires that the Trustee and Alonso obtain modification of the automatic stay to allow the determination of all issues related to probate and the right and entitlement of probate-related parties, to be determined by the Probate Court, and subject to the conditions of this Order.

8. The Trustee and Alonso seeks to modify the automatic stay which may be applicable to all proceedings by the parties in the Probate Court and to allow each party to proceed in the Probate Court and to preserve all rights and claims to any interest of the Debtor in and to the Estate, Estate Property, or liability to the Estate, subject to the conditions of this Order.

and the Court accordingly further finds that good cause exists for the relief requested by both the Trustee and Mary Katherine Alonso in all things, and accordingly, it is

ORDERED that the stay of all proceedings provided in 11 U.S.C. § 362 be, and is hereby modified and partially lifted to allow the Trustee and Mary Katherine Alonso, as the case may be, to proceed in the Probate Court to pursue their respective rights and obtain any and all remedies and relief available in the Probate proceeding of the Estate including against: (i) the Debtor or the Debtor's rights or interest in the Estate or the Estate's property; or (ii) the Debtor's liability to the Estate or to Alonso or to the Trustee; to the extent that the Debtor is found to have any interest, tangible or intangible, in any of the Estate's property as determined by the Probate Court; and it is further

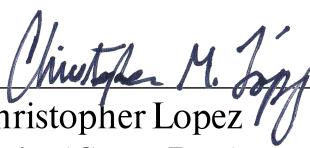
ORDERED that the disposition of any interest, if any, found to belong to the Debtor in, or to, the Estate or in, or to, any Estate Property, and to the extent the Trustee asserts a claim thereto, shall be fully preserved to a determination by the Bankruptcy Court as between the bankruptcy

estate and any adverse or competing claim of Alonso to such interests of the Debtor; and it is further

ORDERED that this determination of competing interest shall be promptly brought by Motion of the Trustee in, and determined exclusively by, this United States Bankruptcy Court; and it is further

ORDERED that the Court retains jurisdiction to modify, amend this Order on the Motion of a party in interest.

Signed: June 07, 2022

  
Christopher Lopez  
United States Bankruptcy Judge

**EXHIBIT B**

**ENTERED**

July 16, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

**In Re:****SCOTT VINCENT VAN DYKE****Debtor(s)**

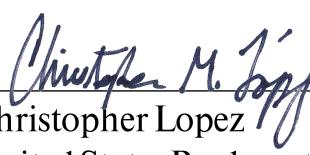
§ Case No. 21-60052 (CML)  
 §  
 §  
 § Chapter 7  
 §  
 § RE: Docket No. 355

**ORDER CLARIFYING THE ORDER  
CONDITIONALLY MODIFYING THE AUTOMATIC  
STAY TO PERMIT CERTAIN PROBATE PROCEEDINGS TO CONTINUE**

The Movants filed their *Joint Motion to Clarify the Order at Docket No. 176 Conditionally Modifying the Automatic Stay to Permit Certain Probate Proceedings to Continue* (the “Motion”),<sup>1</sup> and finding that this Court has core jurisdiction over the relief sought and due and proper notice and opportunity to be heard has been afforded according to law, and the Court hereby ORDERS THAT:

1. The Stay Order allows all Probate Estate claims against the Debtor to proceed in probate court.
2. This Order shall be immediately effective and enforceable upon its entry.
3. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: July 16, 2024

  
 \_\_\_\_\_  
 Christopher Lopez  
 United States Bankruptcy Judge

<sup>1</sup> Capitalized terms not defined in this Order are defined in the Motion.

**EXHIBIT C**

## 1 REPORTER'S RECORD

2 TRIAL COURT CAUSE NO. 501470

3 IN THE ESTATE OF ) IN THE PROBATE COURT  
4 MARY THERESA CONNELLY )  
5 VAN DYKE, ) NUMBER TWO (2) OF  
6 DECEASED ) HARRIS COUNTY, TEXAS

7 TRIAL COURT CAUSE NO. 501470-401

8 MARY KATHERINE ALONSO AND ) IN THE PROBATE COURT  
9 RUDOLPH M. CULP, AS DEP. )  
ADMINISTRATOR OF THE )  
ESTATE OF MARY THERESA )  
10 CONNELLY VAN DYKE, DECEASED )  
VS. ) NUMBER TWO (2) OF  
12 SCOTT VAN DYKE, PAYTON )  
BOOMER INVESTMENTS, LLC, )  
13 AND PATTEN TITLE )  
HOLDINGS #1, ET. AL. ) HARRIS COUNTY, TEXAS

16 \*\*\*\*\*

## 17 MOTIONS HEARING

18 \*\*\*\*\*

20 On the 19th day of December, 2024, the following  
21 proceedings came on to be heard in the above-entitled  
22 and numbered cause before the Honorable Pamela Medina,  
23 Judge presiding, held in Houston, Harris County, Texas;

24 Proceedings reported by computer-aided  
25 transcription/stenograph shorthand.

## A P P E A R A N C E S

MR. CULLEN MCDONALD  
JACKSON WALKER, LLP  
1401 McKinney, 19th Floor  
Houston, Texas 77010-1079  
PHONE: 713.752.4200  
**ATTORNEY FOR MARY KATHERINE ALONSO**

- AND -

MR. RUDOLPH M. CULP  
1401 Truxillo Street  
Houston, Texas 77004  
PHONE: 713.659.4200  
**DEPENDENT ADMINISTRATOR**

- AND -

MR. KENNETH KROHN  
2100 West Loop South, Suite 1125  
Houston, Texas 77027  
PHONE: 713.429.0575  
**ATTORNEY FOR SCOTT VINCENT VAN DYKE**

- AND -

MR. PETER SMART  
CRAIN CATON & JAMES, P.C.  
1401 McKinney, Suite 1700  
Houston, Texas 77010  
PHONE: 713.752.8602  
**ATTORNEY FOR PAYTON BOOMER INVESTMENTS, LLC**

1                   **I N D E X**  
2                   (**MOTIONS HEARING**)

3                   **DECEMBER 19, 2024**

	<b>PAGE</b>
4 Motion to Compel Accounting.....	4
4 Court's ruling.....	34
5 Reporter's Certificate.....	49

6                   **ALPHABETICAL WITNESS INDEX**

7                   (No witnesses this volume)

8                   **EXHIBIT INDEX**

9                   (No exhibits this volume)

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (Open court, no jury)

2 THE COURT: I call Cause No. 501470, in the  
3 Estate of Mary Theresa Connelly Van Dyke.

4 All right. If each of you could please  
5 announce for the record.

6 MR. MCDONALD: Cullen McDonald on behalf of  
7 Mary Katherine Alonso.

8 MR. CULP: Rudy Culp, dependent  
9 administrator.

10 MR. KROHN: Kenneth Krohn on behalf of  
11 Scott Vincent Van Dyke, Your Honor.

12 MR. SMART: Peter Smart on behalf of Payton  
13 Boomer Investments.

14 THE COURT: Okay. So on a motion to compel  
15 payment for purchase of personal property; is that  
16 correct? Motion to compel payment for the purchase of  
17 personal property.

18 MR. CULP: Is that set today?

19 THE COURT: That's what I have on my docket  
20 sheet.

21 MR. CULP: Well, I'm happy to discuss it.  
22 I don't have it with me, but I am happy to discuss it.  
23 That's a -- would you like to go forward with that?

24 THE COURT: Are you prepared? There may be  
25 an issue --

1                   MR. CULP: I'm prepared -- I know what it  
2 is. So I'm happy to do it as long as everyone else  
3 wants to hear it.

4                   MR. KROHN: No. I don't think I noticed  
5 that hearing, Your Honor. If it was on the docket, I  
6 don't think I --

7                   THE COURT: It was not yours? Okay.

8                   MR. CULP: It was mine.

9                   MR. SMART: I think there's two or three  
10 things on the docket, but I don't believe that's one of  
11 them.

12                  MR. KROHN: So in the base matter, 501470,  
13 there is a motion to compel an accounting, but the  
14 notice of hearing was issued under the 401. So you may  
15 have picked up the motion to compel --

16                  THE COURT: I do have the motion to  
17 compel -- provide accounting and for contempt and  
18 sanctions.

19                  MR. CULP: Yes.

20                  THE COURT: That's yours.

21                  MR. CULP: Yes.

22                  THE COURT: I also have the other one. I'm  
23 not sure why.

24                  MR. KROHN: I think it got picked up  
25 because the notice was filed in the wrong cause number.

1 And so it got -- the motion to compel that is pending in  
2 the estate -- the motion to compel in the estate, the  
3 base matter, is the one that I think Mr. Culp --

4 MR. CULP: Yes.

5 MR. KROHN: -- intended to notice today.  
6 The notice that he filed, though, was in the 401. And  
7 so -- but the notice actually says -- if you look at the  
8 notice of hearing, it's on the motion to compel  
9 accounting.

10 THE COURT: Right. And then I have also  
11 have a motion for leave of court to take deposition of  
12 Scott Van Dyke. Is that --

13 MR. MCDONALD: That's our motion, Your  
14 Honor.

15 THE COURT: Okay. So just those two?

16 MR. KROHN: Well, we also filed a motion to  
17 continue, Your Honor.

18 THE COURT: Oh. When did you file that?

19 MR. KROHN: Monday. And it got filed in  
20 both cases. And we requested it be set for a hearing  
21 today. We provided notice on Monday.

22 THE COURT: Okay. Your motion -- I'm  
23 sorry. I didn't get the motion for continuance. I'm  
24 not sure why.

25 MR. KROHN: The motion itself, Your Honor,

1 is relatively short, but the attachments, just to kind  
2 of give -- are long, but they're just informative to  
3 understand the underlying -- underlying issue.

4 THE COURT: Motion for continuance.

5 12-16-2024. Maybe it's because of the time, maybe.

6 MR. KROHN: Maybe, Your Honor.

7 THE COURT: Not three days. Yeah, they  
8 didn't pull that one.

9 And were you provided notice on motion for  
10 continuance?

11 MR. CULP: Notice was filed.

12 THE COURT: You did have notice. Okay.

13 But it's not agreed to, correct?

14 MR. MCDONALD: It's not agreed, Your Honor.

15 THE COURT: Okay. So the continuance is  
16 just for the trial; is that correct?

17 MR. KROHN: Correct, Your Honor.

18 THE COURT: January 16th.

19 MR. KROHN: Yes, Your Honor.

20 THE COURT: Okay. So why don't we just go  
21 forward with the -- not the motion to compel payment,  
22 but provide accounting. Let's move forward on that one.  
23 And I guess motion for leave of court to take  
24 depositions. Those two. Let's do those. And then  
25 we'll move to the last.

1                   MR. KROHN: Thank you, Your Honor.

2                   THE COURT: You're welcome.

3                   You may proceed.

4                   MR. CULP: Thank you, Your Honor.

5                   Your Honor, as you know, I'm the dependent  
6 administrator of this estate. And this a -- kind of a  
7 continuance from an order entered by this Court on  
8 September 26th of 2024, ordering Mr. Van Dyke, Scott Van  
9 Dyke, to account to me for the actions taken under the  
10 power of attorney. If -- do you have a copy of the  
11 accounting? I have a copy if I can approach.

12                  THE COURT: Okay. Yes, you may.

13                  MR. CULP: This is attached as Exhibit E-1  
14 to my second motion to compel. And that is the  
15 accounting that we received as response to your order  
16 compelling Mr. Van Dyke to provide an accounting.

17                  Where it's lacking significantly is No. 3  
18 of the order which states "A complete account of all  
19 receipts, disbursements, and other actions of the  
20 attorney-in-fact or agent, including their source and  
21 nature of each receipt, disbursement, or action, with  
22 receipts of principal and income shown separately."

23                  And so what you have there is a list of  
24 what Scott indicates are assets he's aware of. You will  
25 see that he does indicate certain sums of money that he

1 was -- received by the -- himself as power of attorney.  
2 But what you don't see is any description of what  
3 happened with those funds. And so that's where it gets  
4 really interesting, Your Honor.

5 I apologize. May I approach?

6 THE COURT: Yes.

7 MR. CULP: And this is attached as G-1  
8 through -- Exhibits G-1 through I-1 of my second motion  
9 to compel. And these are documents -- these are bank  
10 statements from the decedent. And you will see -- the  
11 first one is included simply to show that Scott Van Dyke  
12 is listed as power of attorney at least as early as  
13 December of 2017.

14 And if you turn a few pages in, you will  
15 see that we start to see that the checks written on this  
16 account are all written by Mr. Van Dyke. These are  
17 pretty innocuous, Amazing Place -- I don't know what  
18 these are -- Ann Harris Bennett Tax Assessor. That  
19 could be for the decedent, it could be for Scott, but  
20 these are written by Scott.

21 But in his accounting, there is no  
22 indication of what this is for. They're not even  
23 listed. We have no -- no information. He's going to  
24 claim that he doesn't have access to these. But, Your  
25 Honor, under the code he is bound to maintain these

1 records until he is discharged by either the principal  
2 or the Court. Neither of which has ever happened.

3                   And let's see. So if you turn another  
4 page, you will see the G-2, May 11th, 2021 statement.

5                   THE COURT: Uh-huh.

6                   MR. CULP: And that's where you have the  
7 influx of -- from Payton Boomer of \$30,000. And that's  
8 on page 2 of this statement. And then \$161,000 from  
9 Patten Title. And that was the transaction that is the  
10 basis of the lawsuit in regards to the purchase of the  
11 house. And so those funds do go into the decedent's  
12 account.

13                  But what gets really interesting is when  
14 you start to look at how those proceeds were spent  
15 immediately after they were received. So if you turn to  
16 page 4 of 6 of that statement, you will see Scott Van  
17 Dyke writes himself a check for \$1400. There's many  
18 checks here. As soon as the money comes in, he starts  
19 spending it.

20                  But then you look at 5 of 6, you will see  
21 another check to Scott Van Dyke himself for 3,000,  
22 another check to himself, Scott Van Dyke, for 1,000,  
23 another check to Scott Van Dyke for 3,000, another  
24 check -- oh, then there's a check to Texas Petroleum  
25 Operations LLC. That's under the -- and I have the

1 documents, but if you -- the Texas Secretary of State  
2 shows Scott as the sole owner of that company. And  
3 that's \$52,100 to them. And then you have a withdrawal  
4 signed by -- all of these are signed by Scott -- of  
5 \$25,000 from that account in cash.

6 So now we're down to 100,000 if you go to  
7 G-3. And if you turn to Page 5 of 8 of that statement,  
8 you will see again Scott Van Dyke \$3,000; Texas  
9 Petroleum Operation, \$27,000; Scott Van Dyke, \$5,000;  
10 another Scott Van Dyke, \$5,000. Next page. Scott Van  
11 Dyke, \$4,000. Scott Van Dyke, \$9,000. Texas Petroleum  
12 Operations, \$500. And then the next page you will see  
13 again Scott withdraws \$10,250 from this account.

14 None of these transactions are listed. We  
15 have no information about what this money was for, what  
16 it was used for, nothing in his accounting. G-4. The  
17 account has been spent down to 26,287.95. And by the  
18 end of this period, it is down to 2,000. If you turn to  
19 page 4 of 6, you have another check to Texas Petroleum  
20 Operations for \$1500. You have a check to Scott Van  
21 Dyke for \$2,000.

22 Page 5 of 6, Payton Boomer, which is --  
23 this is -- I'm assuming it would be the first check paid  
24 to them in compliance with their agreement for 27 --  
25 2,725. And then you have Texas Petroleum Operations,

1 \$800. And at that point, you're down to very little  
2 money, Your Honor.

13 And Mr. Krohn practices in this area. He  
14 knows it's inadequate. He wants to make claims that  
15 Scott's unable to pay for it, Scott's unable to access  
16 the documents. Well, Scott has a duty to account.

17 You're also going to see a really long  
18 argument that we all heard this past week or two weeks  
19 ago at the fiduciary litigation seminar. And it's an  
20 argument that once the decedent dies that -- or once the  
21 principal dies, that the right to an accounting dies  
22 with it. What you won't see is any case ever holding  
23 that because it's never been held. It's an argument,  
24 it's an academic argument as to whether or not there is  
25 a right to that or not.

1                   And I would ask this Court to rule in the  
2 same way that this Court and every court in Harris  
3 County has ruled since I started practicing is, the  
4 executor is entitled to demand an accounting from an  
5 agent under power of attorney. And there's not a single  
6 written law or case that would say otherwise.

7                   So without a doubt, the accounting is  
8 inadequate. Without a doubt, there is information that  
9 we need and we're entitled to get in which Scott owes to  
10 the estate. I also indicated in my -- just so that  
11 we're clear, I indicate in my motion that I would  
12 provide additional information at court because of the  
13 size of it.

14                   May I approach?

15                   THE COURT: Yes.

16                   MR. CULP: This is just a set of every --  
17 every check written on this account starting in December  
18 of 2017. And what -- all I'm asking the Court to note  
19 is that every single check, every single withdrawal is  
20 signed by Scott Vincent Van Dyke. He is handling this  
21 account at all times. And for him to indicate now that  
22 he's unable to account for his actions is not  
23 sufficient. He has to account. He is going to tell  
24 you, Your Honor, that he's -- that he doesn't have  
25 money.

1                   May I approach, Your Honor?

2                   THE COURT: Yes.

3                   MR. CULP: So this is an excerpt that was  
4 downloaded from Scott's eviction case of which he  
5 successfully avoided eviction. And what it shows --  
6 this is Scott's own exhibit in that case. And what it  
7 shows is that since May of 2023, he has purportedly paid  
8 \$480,000 for his house. This is the man who claimed  
9 bankruptcy, claimed to have no money, claims now to not  
10 have sufficient funds to account to this Court and to  
11 the estate for the actions that he took.

12                  So the idea that he doesn't have funds is  
13 not true. And so I don't know where these funds are  
14 coming from. You can't tell. They are going into  
15 Scott's account. But in here, there is -- there is one  
16 transaction where Scott is sending over \$100,000 back to  
17 whatever account he's pulling from. Now, I don't know  
18 any information about this, but he's clearly got access  
19 to funds available for him to account.

20                  THE COURT: You're saying a third account,  
21 separate and apart from --

22                  MR. CULP: All I have is this --

23                  THE COURT: No. I'm asking -- you just  
24 referenced an account he's putting money back into.

25                  MR. CULP: Okay.

1                   THE COURT: What do you mean?

2                   MR. CULP: Correct. This is his personal  
3 account. This is his eviction. This is his defense to  
4 the eviction. And in here, he provides the statements  
5 which are his account.

6                   THE COURT: Right, separate from what  
7 the --

8                   MR. CULP: Yes --

9                   THE COURT: -- POA?

10                  MR. CULP: -- completely separate. I've  
11 taken control of those accounts.

12                  THE COURT: Okay.

13                  MR. CULP: And then there's a third account  
14 from which money is coming in and money is going back to  
15 from Scott's account during the time period that he  
16 presented --

17                  THE COURT: And going in and coming out are  
18 what you're showing me right here?

19                  MR. CULP: Yes, Your Honor. That's his  
20 exhibit in the eviction court. So this shows what he  
21 paid or he purports to have paid. And he won this  
22 eviction case, so I'm assuming that he could prove this.  
23 \$480,000. And this is his Frost account.

24                  And you will see there is money coming in  
25 from 0277. And then -- yes, 0277 is where money comes

1 in. And then there's -- at one point, there's over  
2 \$100,000 that actually goes back to the account from  
3 which it was coming from or from which all these  
4 transfers were coming 30 to \$40,000 a month.

5                  Yeah, there's a teller deposit on 4-25  
6 where he transferred to that same account, 3724. That's  
7 on page 1 of 4, statement 5-21-24. So -- and that's  
8 after he deposited something for over \$100,000. So he  
9 does have access to funds.

10                THE COURT: And this one that you handed me  
11 shows the 30,000 payment as late as September of 2024 --

12                MR. CULP: Correct, Your Honor.

13                THE COURT: -- for mortgage. Is that what  
14 that's for?

15                MR. KROHN: Your Honor, I would object to  
16 the tender of these exhibits. These are not certified  
17 copies. They've not been offered. The information is  
18 hearsay.

19                MR. CULP: Scott's here if you want to ask  
20 him if they're real. We can put him on the stand right  
21 now.

22                THE COURT: Is that you -- are we doing  
23 that?

24                MR. CULP: I'm happy to. If that's the  
25 objection, I will put Scott on the stand right now.

1                   MR. KROHN: Your Honor, these exhibits,  
2 first of all, have not been produced in discovery prior  
3 to two minutes ago. I have no way to authenticate them.  
4 And you're putting my client on the stand --

5                   THE COURT: No, I didn't say I was putting  
6 him --

7                   MR. KROHN: Well --

8                   THE COURT: I didn't say that.

9                   MR. KROHN: -- they're saying put my client  
10 on the stand to prove up exhibits that have never been  
11 produced in discovery.

12                  MR. CULP: We just got them.

13                  THE COURT: Okay. All right. So we'll  
14 hold on to these. I can make my decision regardless.

15                  MR. KROHN: Thank you, Your Honor.

16                  THE COURT: Okay. Is there anything else?

17                  MR. CULP: Your Honor, I guess I am -- I  
18 have asked that the Court find that Scott is in contempt  
19 for failing to do this. I did notify and I've attached  
20 a letter that I sent to Mr. Krohn asking him to amend  
21 the accounting to comply with the law. I never got a  
22 response from that. Your court -- Mr. Krohn's argued  
23 that sanctions are not appropriate here but, he's in  
24 contempt of an order.

25                  This Court ordered this accounting and he's

1 failed and refused to do so. We're down here again.  
2 I'm happy to put on -- you know, if the Court is going  
3 to consider sanctions, I can put on my fees for the  
4 amount of fees that I have incurred in getting this  
5 accounting to date. But I don't want -- I don't want to  
6 take the Court's time unless that's something that the  
7 Court is going to consider.

8 THE COURT: Okay. So how much time,  
9 Attorney Krohn, do you think it would take for your  
10 client to provide a proper accounting, or if ever?

11 MR. KROHN: There's -- Your Honor, I  
12 certainly hate to concede the point out of context  
13 because there are bigger issues at play here. And I  
14 don't want to present the arguments out of context, but  
15 I will answer at this point I don't know. And I will  
16 explain to you why.

17 THE COURT: Okay.

18 MR. KROHN: The -- I certainly just want to  
19 be very clear I'm taking this out of context, but I will  
20 explain the problem with the account. What Mr. Culp has  
21 not explained to you is that on November 8th, I  
22 believe -- and if you look at the response to the motion  
23 that was filed, exhibit -- attached as an exhibit is an  
24 email that I sent to Mr. Culp on November 25th with a  
25 date of transfer.

1                   THE COURT: Is it your answer?

2                   MR. KROHN: It's in the answer, Your Honor,  
3 Exhibit 2, I believe, or right before Exhibit 2. It  
4 looks like 1-8. But I guess it's the last page of  
5 Exhibit 1. And on November 8th, we provided Mr. Culp  
6 with approximately 3,141 pages of --

7                   THE COURT: I do recall that.

8                   MR. KROHN: And they were sent to him by  
9 Dropbox. This was part of our communication that I  
10 explained to Mr. Culp we had these records, we can  
11 provide them. There were some issues trying to get the  
12 transfer link to him, so we offered to send him a USB.  
13 We ended up sending it by a Dropbox transfer.

14                  And these records include adequate  
15 explanations of what occurred. There were accounting  
16 ledgers -- I don't want to say they were QuickBooks or  
17 whatever, but they were some sort of accounting ledger  
18 system that was obtained by Mr. Van Dyke's former  
19 accountant. I don't want to say CPA, but she was an  
20 accountant --

21                  THE COURT: Bookkeeper.

22                  MR. KROHN: -- at the company and she was  
23 doing personal financial transactions. She maintained  
24 his checkbooks for him. So these were disclosed  
25 transactions that were incorporated into the account.

1 If you look at the response that was provided --

2 THE COURT: What date was that, your  
3 response?

4 MR. KROHN: The response that was  
5 provided -- the account itself was submitted to Mr. --  
6 Mr. Culp --

7 THE COURT: Culp.

8 MR. KROHN: -- on the 26th of September, I  
9 believe, or the 27th. It was the day after the hearing.

10 THE COURT: Okay.

11 MR. KROHN: And at that time in the account  
12 that was produced, we made reference -- the cover letter  
13 that was provided, we made reference to the fact that we  
14 were providing these -- these documents separately and  
15 that they were intended to be incorporated. So when we  
16 produced these records, we believed that the account was  
17 complete based off of the complete side of information  
18 that we had available to us at that time.

19 And Mr. Culp is correct in one sense, which  
20 is we do argue we don't have some of these records.

21 These were online banking records that were maintained  
22 with Mrs. Van Dyke's online accounts. And when she died  
23 and my client's authority as agent lapsed, he doesn't  
24 have access to those records anymore. The only person  
25 who has access to her online records is Mr. Culp. And

1 he hasn't given us those records. If he says, I want  
2 you to go through and identify specific transactions, we  
3 don't have the records.

4 And so it's not that we are destroying the  
5 records and we didn't keep them. It is not outside the  
6 bounds that any fiduciary, whether you're a trust  
7 officer at a bank or a trustee in private practice,  
8 you're usually maintaining your records in an on --  
9 they're available online, you keep them online. You  
10 don't destroy them. The underlying transactions and  
11 data that Mr. Van Dyke used to reconcile these records  
12 was provided. It was months ago, a month and a half ago  
13 at the very least. And that is my explanation to the  
14 Court.

15 But before we get into the substance of  
16 whether there was compliance or not, there's a more  
17 fundamental question, Your Honor, on two grounds. And  
18 the first one is: Is there authority to compel an  
19 accounting under 104 -- 751.104 after the agent dies.  
20 And second, do we get into the concept that there is or  
21 isn't compliance with the order.

22 And so addressing the first issue, Mr. Culp  
23 is correct that was one of the topics that was presented  
24 at the fiduciary litigation conference that occurred on  
25 December 5th and 6th. It was a paper written by Kenneth

1 Sumner and Elisa Silguero from Romano Sumner and it was  
2 presented by Ryan Cantrell from Chamberlain Hrdilka.

3                   And the argument that's advanced in that  
4 paper is when you read the text of the statute, 701 --  
5 751.104, which limits the authority to demand an  
6 accounting to the principal, there is no language in  
7 that statute that expands the category of individuals,  
8 successors, assigns, representatives, heirs, or  
9 beneficiaries. Right?

10                  So when you read the statute, it says Mary  
11 Theresa Connelly Van Dyke can make a demand for an  
12 accounting and there is no authority to say "and anyone  
13 else." The statute itself is final. It's not  
14 expandable. In contrast, there are other sections of  
15 the statute that expand that talk about other people who  
16 can ask. If you look at the right to initiate a  
17 judicial action under 251, there is a list of people  
18 that is much more expansive than the principal. It  
19 includes successors, guardians, not executors. Right?

20                  That's a very interesting reaction when you  
21 look at what language the statute uses that the  
22 legislature intended for those. And there's arguments  
23 that can be made many ways one way or the other. But I  
24 think the most pressing reasons why you have to read the  
25 right to demand an accounting and compel an accounting

1 under 104 and 105 as being limited rights is the duty of  
2 compensation and the duty of reimbursement.

3                   When an account is demanded, the agent gets  
4 to use fiduciary sources to prepare the account and gets  
5 to compensate for their time in preparing that account  
6 and the time of reimbursement spent on lawyers and  
7 accountants in securing those records necessary in order  
8 to prepare the requested accounting. These are  
9 fiduciary expenses. And the statutes under 751, I  
10 believe 1 through 1, specifically says these  
11 reimbursements shall be reimbursed.

12                  And in this case, if you expand the concept  
13 to say a former agent must prepare this accounting after  
14 their power -- after their power has lapsed and somebody  
15 else is in control of the pot of money, the action to  
16 defend themselves in responding to this request is no  
17 longer shall be reimbursed. They do not have access to  
18 the money in order to pay for this very expensive  
19 accounting that's being questioned.

20                  And so there is reason that you should  
21 interpret the statute as limited and not expansive. But  
22 further, the legislature has dictated to the courts and  
23 to the state what remedy exists when you fail to  
24 account. And under 105, it says the principal may --  
25 principal, not their successors, assigns, agents,

1 representatives, guardians, anybody else. The principal  
2 may file suit to compel the account to deliver the  
3 account or assets or to terminate the durable power of  
4 attorney. They don't authorize fees and costs. They do  
5 not authorize any of the other relief that Mr. Culp is  
6 asking for under this express statute.

7 So what we believe that he's doing is he's  
8 asking the Court to do that which it cannot, which is  
9 judicially amend the statute, add words and theories and  
10 claims that the legislature either did not consider or  
11 has rejected.

12 And in this case when you read this  
13 statute, the remedy requested, demand to account, is  
14 limited to the principal. And the remedy for the  
15 failure to account is to file suit and secure the  
16 accounts or terminate the power of attorney. And there  
17 would be no need to terminate the power of attorney  
18 after the agent relationship terminates by operation of  
19 law upon the principal's death. Right?

20 So there is no question when Mrs. Van Dyke  
21 died, Scott's authority to act as her agent terminated.  
22 And so when we look at this, we have to come back with  
23 the first question of statutory construction: Can you  
24 compel an accounting in this circumstance? I, too, did  
25 a little bit of research outside of this and there's

1 really no case law that talks about this. There is only  
2 one case that I kind of found that dealt with an  
3 analogous issue. And that is -- may I approach, Your  
4 Honor?

5 THE COURT: Yes.

6 MR. KROHN: It is a case, *Dawson versus*  
7 *Lowrey*.

8 THE COURT: Thank you.

9 MR. KROHN: Thank you.

10 It is a 2014 opinion from the Texarkana  
11 court of appeals. For the record, it's Case  
12 No. 06-13-00107-CV. And this case dealt with the demand  
13 for an accounting post-death by the POD beneficiaries on  
14 an account. They said, hey, agent, formerly accountant,  
15 there's a POD designation, we want to come in and we  
16 want to make a claim for an accounting because we're the  
17 beneficiaries of this -- of this property and this guy  
18 is demanding.

19 And the Texarkana court of appeals came  
20 back and said in this circumstance, the successor  
21 beneficiaries of this account the POD beneficiaries lack  
22 standing to demand an accounting because that right  
23 belonged to the principal, not to them. It didn't  
24 transfer.

25 There is no case that talks about whether

1 the executor can do it or not. There's no case that  
2 talks about whether a guardian can do it or not.  
3 There's no case that talks about whether a successor  
4 agent under a power of duty -- attorney can do it or  
5 not.

6                   But what we do know out of all these claims  
7 is this is different than a guardian that is operating  
8 during a time when the agent is alive. This is  
9 different from a successor agent who's operating during  
10 the time when the agent is alive. We're talking about  
11 post-death. And the only case that I have found -- I  
12 did not spend 30 hours researching this. I did spend  
13 about 45 minutes looking for it. So it's something. Is  
14 this one case that talks about the right does not  
15 transfer to the estate.

16                   What does the personal representative do to  
17 represent the estate? And so if the estate does not  
18 have the right, because the right belonged to the  
19 principal prior to death, I don't think that the -- I  
20 don't think that the personal representative does  
21 either.

22                   Compounding the problem is now they want  
23 you to impose contempt without presenting to the Court  
24 any authority saying that the request or the order  
25 itself being issued originally is law and without any

1 evidence showing or reference to the fact that over  
2 3,000 pages of financial records, registers,  
3 transactions were produced that supported the account.  
4 So I don't think that contempt is proper.

5 There is something else that I heard today  
6 that didn't come across very clearly. And this is why  
7 we'd caution the Court that the issue on reimbursement  
8 and cost is very important here. If you want further  
9 accounting and you want to know how many hours it's  
10 going to take, I will tell you there's two things that  
11 cause me concern.

12 Mr. Culp went to great extent to come back  
13 and talk about misappropriation of money by Mr. Van Dyke  
14 that's unexplained. I do not believe that the statute  
15 authorizing a fiduciary account in any way would  
16 circumvent my client's constitutional rights either to  
17 assert a Fifth Amendment defense to responding and  
18 incriminating himself in criminal conduct. And if  
19 that's the allegation here, he stole money, my client  
20 certainly needs a criminal defense counsel.

21 I think I'm an okay lawyer, but I know that  
22 I'm not anywhere near competent to provide criminal  
23 defense representation to my client. He would need a  
24 criminal defense lawyer to sit down, go over, and help  
25 him prepare the accounting. And we would need an

1 accountant to go through because there are 3,000 pages  
2 of records. There's hundreds if not thousands of more  
3 pages of records that Mr. Culp is in possession of that  
4 he would have to provide us so that we can explain what  
5 these transactions are.

6 So there are two sources of costs. So we  
7 would need criminal defense time. We would need my time  
8 or -- and probably an accountant's time to come in and  
9 prepare the requested relief. These are all authorized  
10 as reimbursements and costs under 751.131(1) -- I'm  
11 sorry -- 10 -- reimbursement under the estates code.  
12 And so in this case, there is something that -- under  
13 751.024. I'm sorry.

14 So in this case, if we are going to come in  
15 and compel further accounting, one, I will tell you I  
16 don't know that there's authority to do that, but, two,  
17 if we do, the costs have to be secured. What Mr. Culp  
18 is trying to do with the defendant who is bankrupt --  
19 and it doesn't matter how he's paying his house or what  
20 he keeps a very expensive house. Texas, for whatever  
21 reason, decided to do an unfettered homestead exemption.  
22 And Mr. Van Dyke at one time earned a lot of money and  
23 has a very expensive home that he's had to fight very  
24 hard to keep.

25 But if you are going to come back and say

1 we're going to impose the obligation to do this, the  
2 estate should bear that expense, because the estate  
3 always should afford that defense -- expense. I'm  
4 sorry. And there's not an exception to that. The cost  
5 and the reimbursements under 751.024, there is no  
6 language that says, well, so long as you're acting in  
7 good faith.

8                   The language -- the terms of the language  
9 are clear. The agent performing these duties is  
10 entitled to reimbursement for his costs and expenses and  
11 for compensation. And so if they're asking for this, my  
12 client will ask for time. I will ask for my time. I  
13 will ask for authority to retain a -- and payment to  
14 hire a criminal defense lawyer. I did speak to one. He  
15 said he would charge us a 15,000-dollar retainer. His  
16 name is Brent Mayr. He's an excellent criminal defense  
17 lawyer in this state.

18                   Because not only would we have to go  
19 through the account, we're also looking at a deposition  
20 that Mr. Cullen's [sic] client wants to take in my  
21 client's capacity individually and as a fiduciary. So  
22 that means that we're going to have to have -- that's  
23 part of the deposition.

24                   THE COURT: So you're saying that you need  
25 to hire counsel because they're going to take a

1 deposition of your client?

2 MR. KROHN: Criminal defense counsel, yes,

3 Your Honor.

4 THE COURT: Okay.

5 MR. KROHN: And so these are all costs that  
6 we come back and say should be borne by the estate and  
7 should be paid by the estate if we're going to make a  
8 former agent have to do that. Otherwise, what we're  
9 doing is we're inventing a set of circumstances for  
10 somebody who has just come through bankruptcy and who  
11 does not have the money that he once did, is now being  
12 held subject to contempt finding because he can't afford  
13 to spend 20, 30, 40, \$50,000 in production costs to  
14 respond to requests.

15 And so I come back and I say -- and I don't  
16 like to say this, but I will -- I will sum it up with an  
17 academic argument. What happens if we do not secure  
18 additional -- an additional account? So what if we do  
19 not order further accounts?

20 So if the Court comes back and says, I  
21 agree I lack authority to compel, or, you know, you have  
22 what you have and it just seems like there's going to be  
23 a lot of expenses going down this path and whether the  
24 estate does or doesn't have money shouldn't all go to  
25 pay for Scott's expense. Right? These are practical

1 concerns because these are real-life controversies  
2 before the Court. So you say, I'm going to try to  
3 figure out what if. What if the executor or the  
4 administrator -- I'm sorry -- has within his ability  
5 right now to prove a case if such a claim -- claim  
6 survived bankruptcy, such a claim survived Mr. Van  
7 Dyke's bankruptcy, he has enough to prove the claim.  
8 Right?

9 I've come back and said my client will have  
10 to assert the Fifth Amendment either in deposition or in  
11 this account and come back and say I cannot answer these  
12 things for violation of my Fifth Amendment. And  
13 ultimately, we know what the law is on that. If you  
14 invoke the Fifth, you get to take an adverse inference  
15 in a civil case -- all right -- if that's what you're  
16 going to do.

17 And so is there a need to further account?  
18 No. Does the executor have within his possession all  
19 the information he needs in order to move forward and  
20 evaluate if a claim exists? Absolutely. Is there a  
21 more fundamental question, does such a claim exist and  
22 will survive bankruptcy? It is. It is presently  
23 pending before Judge Lopez in the bankruptcy court.  
24 That gets into my motion at the very end.

25 But answering Mr. Culp's motion right now,

1 I don't think you have authority to compel an  
2 accounting. The academic paper that has come up  
3 recently and the prevailing thought within the probate  
4 community is probably don't have that either. The  
5 courts have come back and the only court that has talked  
6 about a successor issuing -- a successor post-death  
7 asking for an accounting came back and said  
8 beneficiaries of the estate, which means the estate --  
9 if you look at 750 -- 101.001 of the Estates Code, upon  
10 death, beneficiaries under a will or heirs under law,  
11 their -- their rights vested in the estate as it existed  
12 at the time of the decedent's death.

13 You know, so your rights in that estate  
14 exist in that and all duties that apply at that time.  
15 And so if you look at what the courts have come back and  
16 said, understanding the state of the law, this right  
17 does not seem to transfer to successors of the principal  
18 when the principal is dead. And Mr. Culp is her  
19 successor. And there is no case law for saying that.

20 You should deny compelling by finding  
21 contempt. And if we do want to go down this path, then  
22 the estate should have to bear the cost of the  
23 production. Because this is what is required under  
24 751.024. And that is an affirmative claim that we've  
25 raised in our pleadings on file before the Court, that

1 these costs should be assessed against Scott.

2 As part of our affirmative defense further  
3 asserted in this case a request for attorney's fees.

4 It's not in the response -- well, it is in the response.  
5 We're asking for it. But it is actually part of our  
6 pleadings because this motion to compel is part of the  
7 pleadings that the administrator has filed. And so this  
8 is a matter that will be before the jury. And, again,  
9 we're entitled to this.

10 And so with all that said and done, the  
11 effect of denying the motion, Your Honor, does not pose  
12 a grave risk to the estate. The effect of granting the  
13 motion does pose a grave risk to the estate because the  
14 Court would have to then authorize payment of tens of  
15 thousands of dollars in legal fees. And so we would ask  
16 the Court to deny the motion.

17 THE COURT: Thank you.

18 MR. CULP: Thank you, Your Honor.

19 First of all, *Dawson v. Lowrey* doesn't say  
20 that the executor or administrator is not the principal.  
21 It indicates that the beneficiaries -- and I haven't --  
22 I've read it before. I can't recall exactly what it is,  
23 but it's not on point. Before the Court considers that,  
24 they need to really read this case to see that it  
25 doesn't apply.

1                   *Belt versus Oppenheimer*, which is one of  
2 the key cases in this idea of an executor stepping in  
3 the shoes, indicates that a personal representative  
4 steps in the shoes of the decedent. And it goes on to  
5 state that when looking at whether or not the executor  
6 or administrator has a right to file suit or take --  
7 step in those shoes and take the action they could, it's  
8 on a case-by-case basis and whether there's a policy  
9 reason not to.

10                  And that's where they get into -- they got  
11 into the whole fact of whether or not it was appropriate  
12 because of privity to sue a former attorney, the estate  
13 planning attorney. There is nothing in the case law --  
14 and Mr. Krohn confirms he wasn't able to find any.  
15 There's nothing that says that the principal -- that the  
16 administrator is not the principal who can make this  
17 demand.

18                  The reimbursement or the -- I guess his  
19 claim that he's entitled to be paid for that, what the  
20 statute says is that he gets reimbursement of reasonable  
21 expenses incurred on the principal's behalf. I think  
22 there is a great deal of expenses when you're doing an  
23 accounting as a power of attorney when you haven't  
24 maintained records that are not reasonable. Does he  
25 have a right to claim? Sure, he can file a claim with

1 the estate. But that doesn't prevent the estate from  
2 demanding that accounting. When a -- a guardian steps  
3 in and demands an accounting --

4 THE COURT: So -- hold on. Let me --

5 MR. CULP: Yes.

6 THE COURT: Because this is where I would  
7 like to go with this. I would like the accounting to be  
8 supplemented, but I'm not sure exactly what it is you  
9 want him to supplement.

10 MR. CULP: I want -- I want to know what --  
11 the money coming in and going out was for out of those  
12 accounts.

13 THE COURT: Okay. Anything else?

14 MR. CULP: No.

15 THE COURT: Okay. At this time, I'm not  
16 going to make a determination on the sanctions. And I'm  
17 going to sign the order for the deposition, though.

18 MR. KROHN: On the deposition, Your Honor,  
19 I want to be very clear -- and I certainly don't want to  
20 speak for Mr. Cullen. The problem on the deposition is  
21 not that we don't agree. The problem is we've also  
22 asked to take Mrs. Alonso's deposition too. And they  
23 refused. She didn't acknowledge our request. So --

24 THE COURT: Okay.

25 MR. KROHN: Mr. Cullen sent me an email and

1 said, hey, will your client waive -- or agree to an  
2 out-of-time deposition. And I said he will, but two  
3 conditions need to be met. One, he would like to take  
4 Mrs. Alonso's deposition, too. And number two, we would  
5 need to get some sort of agreement to continue the  
6 January 16th trial date. If we have to supplement, if  
7 we have to take two depositions, there's not enough time  
8 between now and January 16th to get ready.

9                   And in lieu of a response, I got a motion  
10 for leave, which is a response saying we don't agree.  
11 So we don't have a problem with that. We would just ask  
12 that Mrs. Alonso also be ordered to sit for deposition  
13 and we would ask that we be given enough time. You  
14 know, there is --

15                   THE COURT: Do you need a new DCO, though,  
16 at this point or is it just for the depositions and a  
17 new trial date? Is that what you're asking for, rather?

18                   MR. KROHN: Yes, Your Honor. I don't think  
19 we need a complete new DCO, but we need both.

20                   THE COURT: Okay.

21                   MR. SMART: Your Honor, may I speak  
22 briefly?

23                   THE COURT: Yes. Sorry. I've kind of --

24                   MR. SMART: No, that's okay. I wasn't part  
25 of the main case. But Peter Smart on behalf of Payton

1 Boomer. I'm with Crain Caton. If we try the case,  
2 Darlene will be trying it.

3 THE COURT: Okay.

4 MR. SMART: But if the Court is going to  
5 order, which it is going to, obviously, the deposition  
6 of Scott, to me it doesn't make sense to take his  
7 deposition until after whatever he produces.

8 THE COURT: Absolutely.

9 MR. SMART: Okay. So from that  
10 standpoint need --

11 THE COURT: Do we need a time frame for the  
12 production of --

13 MR. SMART: -- we need to push the trial  
14 out four months, five months --

15 THE COURT: No. My question is: Do we  
16 need a time frame for the supplement to the accounting  
17 so that we can get the depo and maybe have a trial?

18 MR. KROHN: So I consider next week dead,  
19 right? I'm not asking anybody to provide me records on  
20 Tuesday. So if we can have the records -- the bank  
21 records that we're missing by sometime the first week in  
22 January, I would ask for 30 days to prepare the account,  
23 and then the deposition after that.

24 THE COURT: Okay. Do I need an order for  
25 all of this to make sure it's all clear to everyone or

1 are we just going to agree on the record?

2 MR. KROHN: I think that we can submit an  
3 agreed order --

4 THE COURT: On dates --

5 MR. KROHN: -- or not an agreed order,  
6 but --

7 THE COURT: On the supplementation, depos,  
8 and then a new trial date.

9 MR. MCDONALD: Judge, I just have a  
10 question for clarity purposes. Are you ordering the  
11 deposition of Scott Van Dyke --

12 THE COURT: Yes.

13 MR. MCDONALD: -- just Scott Van Dyke?

14 THE COURT: I understood you also wanted  
15 to --

16 MR. KROHN: Mary Katherine, yes, Your  
17 Honor.

18 THE COURT: Okay.

19 MR. MCDONALD: Is that being ordered as  
20 well?

21 THE COURT: Uh-huh. Do we have dates that  
22 we want those done by? Oh, you guys are going to  
23 agree -- okay. Well, go ahead.

24 MR. KROHN: After the account I would say.  
25 So --

1 THE COURT: So I guess we need the  
2 accounting date.

3 MR. KROHN: If we have an account by the  
4 first week of February, we can have depositions by mid  
5 February, I suppose.

6 THE COURT: Okay. And you guys are going  
7 to agree to that in an order or do you need me to --

8 MR. KROHN: And just to let you know, Your  
9 Honor, my client has another case that's in April. So  
10 on the trial date, when we go to trial, he has a lawsuit  
11 that's presently set for mid April. That judge  
12 continued because it conflicted with our original trial  
13 setting. So that judge continued a couple weeks ago and  
14 set it as a priority-one case in mid April. So aside  
15 from that, just the new trial setting would be not at  
16 that time.

17                   THE COURT: So we want the accounting done  
18 by mid February, supplemented rather. And then we want  
19 depos done by end of February, by end of February or mid  
20 March. You said 30 days? Am I confused?

21 MR. CULP: I will have him all of -- any  
22 records that I have, I'll have them to him today, if  
23 that helps.

THE COURT: Okay.

25 MR. CULP: So if we could have them by --

1 if we're talking 30 days, I think by February 1st the  
2 accounting should be ready, assuming -- you know,  
3 subject to me actually giving him the documents. I'm  
4 sure we'll be back here if I don't, but I will give  
5 him -- I will get him everything I have today.

6 MR. KROHN: Okay. And then depositions by  
7 the end of February?

8 MR. CULP: Mid February, right?

9 MR. KROHN: February is only about 28 days.

10 MR. SMART: Let's do the end of February,  
11 given the number of attorneys and their calendars.

12 And just another thing, Your Honor, this --  
13 the trial setting that's being continued, January 13th  
14 trial setting, we were the number-one case. So from my  
15 perspective, what's more important when the Court  
16 orders -- sets a new date is that we are number one as  
17 opposed to what date -- what date it is.

18 THE COURT: Yeah. We're already set all  
19 the way till, I think, October of 2025.

20 MR. CULP: Yeah, that's not -- we need to  
21 get it on the --

22 MR. SMART: Well, we need it sooner than  
23 that.

24 THE COURT: Yeah.

25 (Discussion off the record)

1                   THE COURT: Okay. So are we looking at --  
2 I'm sorry. What month are we looking at for the trial?  
3 In May? Because of the other trial.

4                   MR. KROHN: Well, that kind of gets into a  
5 secondary issue, Your Honor, which is Judge Lopez at the  
6 bankruptcy court has been promising an order clarifying  
7 whether or not Scott has been discharged or the claims  
8 survive since October 8th.

9                   What I understand -- I didn't speak with  
10 Judge Lopez's staff, but having spent -- Matt Probus is  
11 the bankruptcy lawyer. The issue is Judge Lopez is  
12 dealing with the Alex Jones' Infowars bankruptcy  
13 proceeding. I would say brouhaha, but there seems to be  
14 the more appropriate legal term.

15                  THE COURT: Uh-huh.

16                  MR. KROHN: And so kind of does not -- does  
17 not feel our case is as pressing as perhaps that one is.  
18 So if we do have a trial setting in May -- we've been  
19 waiting since October. We could have a finding today or  
20 we could have a finding in April. And so I just don't  
21 know. And so I would just -- if we're going to have a  
22 trial setting, that's fine. But I just want the Court  
23 to be aware that we may still be waiting for a ruling  
24 from the bankruptcy court as to whether Scott is liable  
25 or not. And that's kind of a fundamental issue in the

1 case going forward.

2 MR. CULP: To respond to that, Your Honor,  
3 I agree it's problematic, but all we -- the most recent  
4 order I have seen out of the bankruptcy court is go  
5 forth with the lawsuit in probate.

6 THE COURT: Yeah. I think we need to  
7 just --

8 MR. CULP: That's the last one. So I  
9 get -- I mean, we'd all like to have this ruling, but  
10 there's no -- there is other people involved in this  
11 case. You know, if Scott doesn't -- if Scott -- if  
12 there is a judgment and Scott is judgment-proof because  
13 of this ruling, there's no reason it has to keep us from  
14 going. This has been here a long time and we really  
15 need to get it tried.

16 MR. KROHN: Except, Your Honor, that a  
17 bankruptcy discharge is an affirmative defense that  
18 would normally be sustained with summary judgment  
19 pretrial. And it is similar to a plea of immunity,  
20 which means that -- for purposes of why it's different  
21 than Scott just being judgment-proof, we can't collect a  
22 judgment against him; upon discharge, under 11 USC 524,  
23 there's an automatic post-discharge injunction that  
24 applies. That is subject to confinements of contempt.  
25 Right?

1                   So we have -- filing a bankruptcy gives us  
2 the 365 stay. Post-discharge, there is the 524 stay.  
3 And it says --

4                   THE COURT: At this point, we're not under  
5 a stay, correct?

6                   MR. KROHN: Well, not under the 365 stay.  
7 Our position in bankruptcy court is the 524 injunction  
8 prevents Mr. Culp, Mrs. Alonso, even her lawyers from  
9 continuing or commencing an action on a claim that has  
10 been discharged. So there's not -- there's an  
11 injunction, right, there is an injunction. And what  
12 Scott had to do in bankruptcy court is he had to file a  
13 motion to show cause for contempt under that injunction.  
14 That has been what has been pending since September or  
15 October. And I can tell you the exact date. It's in  
16 the motion.

17                  MR. CULP: It's been a very long time.

18                  MR. KROHN: And so the issue that  
19 Mr. Culp --

20                  THE COURT: In the end, if we need to move  
21 the trial, that's your concern, is that we're just going  
22 to have to move it yet again?

23                  MR. KROHN: Yes, Your Honor.

24                  THE COURT: I'm fine with that.

25                  MR. KROHN: Okay. I just -- I just don't

1 want the Court to walk away with the impression that we  
2 all came back and said --

3 THE COURT: Yeah. No. I understand.

4 MR. KROHN: -- no further continuances.

5 THE COURT: Yes, I do understand it. I  
6 just think we should set a trial date.

7 MR. KROHN: And we're fine with that, Your  
8 Honor. So mid -- so let me check. I want to make sure  
9 that I --

10 THE COURT: Do you have any dates? May?

11 MR. SMART: May is fine.

12 THE COURT: May 19th. So in my signing  
13 the --

14 MR. KROHN: Oh. I have a trial, Your  
15 Honor, in this court, the Estate of Woodward, on May  
16 19th.

17 MR. CULP: Perfect. If you don't settle,  
18 we get bumped.

19 MR. KROHN: So I will be here all day.

20 Right? Just to let the Court know, I'm -- you'll see me  
21 a lot that month. We might spend Mother's Day together.

22 THE COURT: Yeah. Okay. So are we staying  
23 with the 19th or are we moving to the next date?

24 MR. CULP: I'm in trial that week.

25 THE COURT: On the 26th.

1 MR. CULP: In Court 5.

2 THE COURT: What about the week before, May  
3 12th?

4 MR. KROHN: Well --

5 MR. MCDONALD: I'm sorry. Are you saying  
6 you don't have anything before May 12th?

7 THE COURT: No. I'm saying what about May  
8 12th?

9 MR. MCDONALD: We have a trial in Madison  
10 County.

11 THE COURT: Okay.

12 MR. KROHN: And I'm in pretrial in this  
13 court, Your Honor, the Estate of Woodward.

14 THE COURT: Well, but we can move that  
15 around. May 5th?

16 MR. MCDONALD: That's the same trial in  
17 Madison County for us.

18 THE COURT: Okay.

19 MR. KROHN: I'm fine with May 19th.

20 THE COURT: Okay.

21 MR. KROHN: Just everybody just  
22 misunderstands --

23 MR. CULP: I'm in trial, though.

24 THE COURT: May 19th?

25 MR. KROHN: I thought you said the 26th.

1 MR. CULP: Is the 26th open?

2 MR. KROHN: The 26th is open.

3 THE COURT: Oh, the 26th is open.

4 (Discussion off the record)

5 THE COURT: Court's closed on the 26th,  
6 county holiday.

7 MR. KROHN: How about June 2nd so that  
8 we're not doing pretrial on Memorial Day?

9 THE COURT: June 2nd?

10 MR. SMART: That's good.

11 MR. MCDONALD: That's good.

12 THE COURT: Okay. So I just need to know  
13 exactly what I'm signing at this juncture. I know you  
14 had a motion to continue. Am I signing that with a new  
15 June 2nd date?

16 MR. KROHN: Yes, Your Honor.

17 THE COURT: Have you reviewed it? Have you  
18 all reviewed it?

19 MR. CULP: I haven't looked at it, no, but  
20 I'm --

21 THE COURT: Okay.

22 MR. CULP: -- sure I don't have an issue  
23 with moving it.

24 MR. MCDONALD: Are you going to include a  
25 new date?

1 MR. KROHN: Just a trial setting.

2 MR. CULP: Trial setting and two depos.

3 THE COURT: Two depos. When are the dates  
4 required for the depos?

5 MR. CULP: Do you want us to circulate an  
6 order? That might be the easiest --

7 MR. KROHN: Well, I think the Judge is --

8 THE COURT: I think we need an order.

9 MR. KROHN: -- putting it on the record.

10 THE COURT: I think we need to, yeah, agree  
11 on the record.

12 MR. KROHN: So we said produce the account  
13 by February the 1st. And --

14 MR. CULP: Depose before March 1st.

15 MR. KROHN: The depos before March 1st.

16 MR. CULP: Post-accounting before March  
17 1st.

18 MR. KROHN: Yeah. And then trial date June  
19 2nd.

20 MR. SMART: Your Honor, if there's not  
21 going to be a new DCO, can -- I would like -- I'm not  
22 saying I'm going to do it, but I would like the  
23 opportunity to file an MSJ sometime before then, if  
24 that's okay.

25 THE COURT: Are we --

1                   MR. KROHN: Yeah. I think your DCO does  
2 provide that summary judgments have to be heard by a  
3 certain date, right?

4                   MR. SMART: Well, yeah.

5                   MR. KROHN: The April DCO, I think, had a  
6 deadline for summary judgments.

7                   THE COURT: Yeah. So maybe we do need --

8                   MR. SMART: There's not going to be -- is  
9 there going to be a new DCO?

10                  THE COURT: I think we need a new DCO.  
11 We'll do that with the trial date of June 2nd.

12                  MR. KROHN: Will the Court just issue it or  
13 do you want us to prepare it and present it?

14                  THE COURT: You want to do it now?

15                  She can help you with that. She can help  
16 you right now with that.

17                  MR. CULP: So we don't --

18                  THE COURT: But we need to also specify  
19 those depo dates and the February 1st accounting date.  
20 Somehow she can just put it in there to make sure.

21                  MR. CULP: Okay. Perfect.

22                  THE COURT: Okay. Thank you all. You're  
23 excused. But just shoot over there. Happy holidays.

24                  MR. CULP: You, too.

25                  MR. KROHN: Merry Christmas, Happy New

1 Year.

2 THE COURT: Happy New Year.

3 (Proceedings recessed)

**REPORTER'S CERTIFICATE**

2 | THE STATE OF TEXAS )

3 | COUNTY OF HARRIS )

4

5 I, Mary Ann Rodriguez, Official Court Reporter in  
6 and for Probate Court No. 2 of Harris County, State of  
7 Texas, do hereby certify that the above and foregoing  
8 contains a true and correct transcription of all  
9 portions of evidence and other proceedings requested in  
10 writing by counsel for the parties to be included in  
11 this volume of the Reporter's Record, in the  
12 above-styled and numbered cause, all of which occurred  
13 in open court or in chambers and were reported by me.

14 I further certify that this Reporter's Record of  
15 the proceedings truly and correctly reflects the  
16 exhibits, if any, admitted by the respective parties.

17 WITNESS MY OFFICIAL HAND this the 9th day of  
18 January, 2025.

19

20

/s/ Mary Ann Rodriguez  
21 Mary Ann Rodriguez, Texas CSR 3047  
Expiration Date: 01/31/2026  
22 Official Court Reporter  
Probate Court No. 2  
23 201 Caroline  
Houston, Texas 77002  
24 713.206.9588

25